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REPORTER'S RECORD

VOLUME 1 OF 1 VOLUME

TRIAL COURT CAUSE NO. B13637

THE STATE OF TEXAS) IN THE DISTRICT COURT
)
vs.) 198TH JUDICIAL DISTRICT
)
VERNON LEE TRAVIS III) KERR COUNTY, TEXAS

* * * * *

MOTION FOR NEW TRIAL

* * * * *

On the 3rd day of July, 2014, the
following proceeding came on to be heard in the
above-entitled and numbered cause, before the Honorable
Stephen B. Ables, Judge Presiding, held in Kerrville, Kerr
County, Texas:

APPEARANCES

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INDEX

<u>July 3, 2014:</u>	<u>PAGE</u>
Appearances.....	2
Proceedings.....	4
Court's Ruling.....	13
Court Reporter's Certificate.....	14

1 THE COURT: This is Cause B13637, The State
2 of Texas versus Vernon Lee Travis. This case was set
3 today on Defendant's Motion For New Trial. I assume,
4 Mr. Churak, that you substituted in for Mr. Brown?

5 MR. CHURAK: I have, Your Honor.

6 THE COURT: And are you ready to proceed on
7 your motion?

8 MR. CHURAK: We are, Your Honor.

9 THE COURT: And, Mr. Monroe, is the State
10 ready to proceed?

11 MR. MONROE: Well, Your Honor, the State has
12 filed a written notice of objection. I just don't
13 want to waive anything. We don't believe that the
14 Motion For New Trial filed raises to the level of the
15 Court needing to conduct a hearing on this. I am
16 prepared to argue that. And if the Court after that
17 decides to proceed on some level, then we can address
18 it at that time.

19 THE COURT: Did you give Mr. Churak a copy
20 of --

21 MR. MONROE: I did.

22 THE COURT: -- objections? So I have
23 State's Objections To Evidence Not Supported By
24 Defendant's Motion For New Trial. Mr. Monroe, I had
25 a chance just to glance at it right before you came

1 in. Mr. Churak, it appears he is raising the issue
2 of no specifics in the motion and motion is not
3 sworn. Do you want to respond to that, Mr. Churak?

4 MR. CHURAK: Judge, I believe that a
5 criminal Motion For New Trial does not need to be
6 supported by additional evidence. If we have a
7 hearing on it, we can present the evidence in the
8 court itself on the motion, so that's my position on
9 that.

10 I was hired last minute. I think I had less
11 than two or three days to file a Motion For New Trial
12 on this case. We just basically got together with
13 the client, put it together. It's my opinion, Judge,
14 that we can present this evidence in the interest of
15 justice in a hearing.

16 THE COURT: I'm a little concerned that
17 there are no specifics. Down through the years on
18 many occasions we have done Motions For New Trial
19 based on affidavits where the -- if the State was
20 given enough specifics, they could go get an
21 affidavit from the trial counsel or somebody else. I
22 can't tell from the body what is it that you are
23 complaining about.

24 MR. CHURAK: Yeah. I basically just said
25 ineffective assistance of counsel. I think there is

1 a couple of issues, Judge. The first is mental
2 condition of the client, whether the attorney took
3 any action on that. Also it's my understanding, I
4 just found out today that my client is on medication.
5 And when he testified at the trial, they actually
6 gave him a double dose of medication, which causes
7 him to be spacy that the deputy gave him while he was
8 up on the stand. I just found that out today.

9 I asked him when he came in, "Are you on any
10 medication?" He said, "Well, yeah. I take this
11 medication, this medication, this medication." I
12 said, "Well, during the trial when you testified,
13 were you on medication?" He said, "Well, they gave
14 me my pills in the morning, the Zoloft and the
15 Viscerine (ph)." And he said, "Then when I was up
16 there testifying, he gave me two Viscerines (ph)."

17 "What did that do to you?"

18 "It made me real spacy. I just went looking
19 up because they never gave me a double dose."

20 I just found that out today, Judge, so that
21 may be an issue, too.

22 THE COURT: Are you planning on calling your
23 client?

24 MR. CHURAK: I plan on calling my client.

25 THE COURT: Okay. I don't think it's

1 sufficient, but I'm going to go ahead and have the
2 hearing and let you make your record. We will
3 proceed on that basis.

4 MR. CHURAK: Thank you, Judge.

5 THE COURT: What would you like to present?

6 MR. CHURAK: Pardon?

7 THE COURT: Would you like to call your
8 client?

9 MR. CHURAK: Yes. I call Vernon Travis.

10 THE COURT: Mr. Travis, would you come up
11 here? You are handcuffed, Mr. Travis, so I'm not
12 going to have you raise your right hand.

13 (The witness was sworn.)

14 THE COURT: All right. Have a seat, please,
15 and tell us your full name.

16 THE WITNESS: Vernon Lee Travis III.

17 THE COURT: Mr. Churak.

18 MR. MONROE: Your Honor, just to make sure I
19 don't waive it, I object to Mr. Travis testifying.
20 There is specific case law that says there must be a
21 supporting affidavit, especially on the grounds of
22 ineffective assistance of counsel. As the Court well
23 knows, there are certain allegations of ineffective
24 assistance of counsel that have been written on
25 extensively. The State has no notice whatsoever as

1 to any of this, and so I'm just not wanting to waive
2 the objection. I think it's inappropriate to put
3 Mr. Travis on the stand without having -- he having
4 furnished an affidavit and we object to him
5 testifying.

6 THE COURT: Did you have a chance to look at
7 the authority that Mr. Monroe cited?

8 MR. CHURAK: Judge, I got served with it
9 this morning. And actually, Judge, on ineffective
10 assistance, you know, I'm not, at this point in
11 time -- I mean, that's something that potentially
12 could be raised at a later date if additional
13 information is obtained. I'm still investigating,
14 trying to find things out on that. I would like to
15 call Mr. Travis just for the purposes of testifying
16 about the medication he was on that day and whether
17 he was lucid and coherent when he was testifying.

18 THE COURT: Thank you.

19 MR. CHURAK: That would serve to the
20 interest of justice.

21 THE COURT: But how would that be in the
22 area of ineffective assistance unless his counsel is
23 the one that directed somebody to do this?

24 MR. CHURAK: That's what I'm saying, Judge.
25 At this point in time, I'm -- that's something that I

1 just found out today. Now, is it ineffective
2 assistance to let the client continue to testify
3 while under the influence of a narcotic drug, I don't
4 know. I would have to research it and look into it,
5 but I would like to at least put something on the
6 record to that. If I have to come back at a later
7 time with a different motion to present ineffective
8 assistance, I would be prepared, in a better position
9 to do it.

10 I got short notice of this hearing too.
11 Initially we were talking about a hearing around the
12 15th of July, and Becky called me up and said --
13 this last week, I think, and said, "Hey, our only
14 date is the 3rd." So I'm kind of short-changed on
15 this too.

16 MR. MONROE: Well, Your Honor --

17 THE COURT: I think it's unfair. I'm
18 assuming the State doesn't have a clue what the
19 allegations are going to be since there is nothing
20 set out.

21 MR. MONROE: The motion has a statement
22 rendered, "Ineffective assistance of counsel." We
23 have no way of preparing for an allegation, and then
24 depending on what the specific allegation is, there
25 are certain prerequisites to even rise to the level

1 where that can -- if shown, can still be ineffective
2 assistance of counsel. The effect of that at this
3 point, especially based on Mr. Churak's argument
4 about wanting to present evidence on something he
5 just found out today, amounts to amending the motion,
6 which the time requirements have all expired -- and I
7 have case law on that, as well -- to amend this
8 motion. And so the State would renew its objection.

9 I have two specific cases. They are cited
10 in the brief, but I have them both. One is the case
11 of Jordan versus State, 883 SW 2d, 664. I hand a
12 copy of that to the Court. And the case of King,
13 K-i-n-g, versus State, 29 SW 3d, 556. Both of these
14 are Court of Criminal Appeals cases.

15 In the Jordan case, if the Court will turn
16 to page 3, and these cases the defense actually filed
17 an affidavit, but the Court said -- and if the Court
18 will look at page 3 in the fourth paragraph, it says,
19 "We further opined," and I'm talking about a previous
20 opinion, "that as a prerequisite to a hearing and as
21 a matter of pleadings, Motions For New Trial must be
22 supported by an affidavit of either the accused or
23 someone else specifically showing the truth of the
24 grounds asserted."

25 That same following -- holding was made in

1 the King case. I direct the Court's attention in
2 that case to page 17. And in that case,
3 interestingly enough, again the defendant filed
4 supporting affidavit that basically just contained
5 the statement, "Ineffective assistance of counsel."
6 And in the King case the statement was also made that
7 the judgment was contrary to the law of the evidence,
8 which is the second ground in this motion before you
9 today. And that's on page 17 of 18, if you will see
10 there. And it says, "When the accused presents a
11 Motion For New Trial raising matters not determined
12 from the record," which these would not be able to be
13 determined from the record, "which would entitle him
14 to relief, the trial judge abuses his discretion in
15 failing to hold a hearing. The motion must, however,
16 be supported by affidavit specifically showing the
17 truth of the grounds of attack. Otherwise, general
18 entitlement to a hearing is a legal fishing
19 expedition."

20 So when you go read the ruling of the Court,
21 they say that the affidavits are not sufficient. In
22 this one we don't even have affidavits. There is
23 another case also supplied in the case Flores versus
24 State. That is 18 SW 3d, 796. If the Court would
25 look on page 4 of 7 under the paragraph marked

1 "Headnote 3," it says, "Filing affidavits in support
2 of a Motion For New Trial more than 30 days after
3 sentencing is considered an untimely attempt to amend
4 the motion." But it goes on to say, "A Motion For
5 New Trial alleging facts outside the record filed
6 without supporting affidavits is not a proper
7 pleading and is fatally defective. The trial court
8 does not err in refusing to grant a hearing on such
9 motion."

10 I think the reason for that is obvious, is
11 that there is no notice. There is no way for the
12 State to do this. We are here at the hearing finding
13 out about what the specifics are. I think it's
14 inappropriate, so the State would object to
15 Mr. Travis' testimony.

16 THE COURT: His authority and arguments seem
17 pretty persuasive, Mr. Churak.

18 MR. CHURAK: I don't have any response. I
19 just got it today, Judge. If the Court deems that
20 it's inappropriate to have a hearing on this matter,
21 I would like it on the record, though, that there is
22 certain information that I discovered today that may
23 lead to ineffective assistance of counsel that may be
24 subject to a writ at a later date. I just want that
25 on the record.

1 THE COURT: I'm going to grant your -- or
2 sustain your objection, and so I'm going to deny the
3 Motion For New Trial based on the fact that the
4 motion itself is defective. I'll make a little note
5 on the docket sheet that the Motion For New Trial has
6 been denied. You can get me a brief order --

7 MR. MONROE: We will do that.

8 THE COURT: -- that it's been denied.

9 MR. CHURAK: Thank you, Judge.

10 (Hearing concluded)

1 THE STATE OF TEXAS X

2 COUNTY OF KERR X

3 I, PAULA BEAVER, Official Court Reporter
4 in and for the 198th District Court of Kerr County,
5 State of Texas, do hereby certify that the foregoing
6 contains a true and correct transcription of all portions
7 of evidence and other proceedings requested in writing by
8 counsel for the parties to be included in this volume of
9 the Reporter's Record, in the above-styled and numbered
10 cause, all of which occurred in open court or in chambers
11 and were reported by me.

12 I further certify that this Reporter's Record
13 of the proceedings truly and correctly reflects the
14 exhibits, if any, admitted, tendered in an offer of proof
15 or offered into evidence.

16 I further certify that the total cost for
17 the preparation of this Reporter's Record is
18 \$___84.00_____and was paid/will be paid by ___Kerr
19 County_____.

20 WITNESS MY OFFICIAL HAND this the_17th__day of
21 March_____, A.D., 2015.

22 /s/Paula Beaver____
23 PAULA BEAVER, Texas CSR 3593
24 Expiration Date: 12/31/16
25 Certified Shorthand Reporter
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